

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding To)
Examine Hawaii's Renewable)
Portfolio Standards Law, Hawaii)
Revised Statutes §§ 269-91 -)
269-95, as Amended by Act 162,)
Session Laws of Hawaii 2006.)
_____)

DOCKET NO. 2007-0008

ORDER NO. 23276

Filed Feb. 23, 2007
At 11:30 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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ORDER

By this Order, the commission grants LIFE OF THE LAND's ("LOL") and HAWAII RENEWABLE ENERGY ALLIANCE's ("HREA") motions to intervene in this docket.

I.

Background

By Order No. 23191, filed on January 11, 2007 ("Order No. 23191"), the commission initiated this proceeding pursuant to Act 162, Session Laws of Hawaii 2006 ("Act 162"), which amended Hawaii's Renewable Portfolio Standards ("RPS") Law, codified as Hawaii Revised Statutes ("HRS") §§ 269-91 - 269-95, by among other things, authorizing the commission to establish and issue penalties against electric utility companies who fail to meet the RPS.¹

¹Under the RPS Law, RPS is defined as the percentage of electrical energy sales that is represented by renewable electrical energy. See HRS § 269-91. Each electric utility company that sells electricity for consumption in the State of

As explained in Order No. 23191, before the RPS Law was amended by Act 162, the commission was tasked to "develop and implement a utility ratemaking structure which may include but is not limited to performance-based ratemaking, to provide incentives to Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the [RPS.]"² To accomplish this task, the commission hosted two two-day workshops on November 22 - 23, 2004 and October 3 - 4, 2005, in which over seventy interested persons participated. The commission also hosted a technical workshop on October 5, 2005.

On June 2, 2006, Senate Bill 3185, S.D. 2, H.D. 2, C.D. 1 was signed into law as Act 162. Act 162, among other things, amended the RPS Law to authorize the commission to issue penalties against electric utility companies who fail to comply with the RPS. In Order No. 23191, the commission found that, by mandating the establishment of a penalty structure in Act 162, the RPS Law now provides sufficient incentive to electric utilities to comply with the RPS. Thus, although the commission originally planned to hold a total of three RPS workshops and thereafter conduct rulemaking, the commission instead determined to proceed by way of investigatory docket.

Hawaii is required by law to meet the RPS of: (1) ten percent of its net electricity sales by December 31, 2010; (2) fifteen percent of its net electricity sales by December 31, 2015; and (3) twenty percent of its net electricity sales by December 31, 2020. See HRS § 269-92(a)(1)-(3).

²Act 95, Session Laws of Hawaii 2004.

As all regulated electric utilities in Hawaii will likely be impacted by the outcome of this proceeding, the commission named HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") as parties to this docket.³ Because, however, the commission was uncertain as to the interests of the remaining industry stakeholders who attended the commission's RPS workshops, and their willingness to participate in this proceeding, the commission served them with copies of Order No. 23191 and allowed them to file motions to intervene or participate without intervention in accordance with the requirements of HAR Chapter 6-61, Subchapter 4 within twenty days of the date of Order No. 23191, or by January 31, 2007.

On January 31, 2007, both LOL and HREA timely filed motions to intervene.⁴

³The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an ex officio party to any proceeding before the commission. See HRS § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62. The Consumer Advocate, HECO, HELCO, MECO, and KIUC are collectively referred to herein as the "Parties."

⁴LOL's and HREA's Motions to Intervene are respectively referred to herein as "LOL's Motion" and "HREA's Motion." No oppositions were filed in response to either motion.

II.

Discussion

A.

Intervention

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;

- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."⁵

B.

LOL's Motion

LOL, a non-profit Hawaii corporation, states that it is "Hawaii's own environmental and community action group advocating for the people and the land since 1970."⁶ In LOL's Motion, LOL states that its mission is to preserve and protect "the life of the land through sustainable land use and energy policies and to promote open government through research, education, advocacy, and when necessary, litigation."⁷

LOL represents that it has been actively involved in the legislative development of the RPS Law, including the original enactment of the RPS Law in 2001 as Act 272, the modifications made to the RPS Law in 2004 by Act 95, and the most

⁵See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

⁶LOL's Motion, at 6.

⁷Id.

recent amendments made to the RPS Law in 2006 by Act 162. LOL further argues that, as an organization concerned with environmental and climatic impacts, it has distinct and unique interests that will not be represented by any of the Parties to this docket.

In addition, LOL lists numerous commission dockets pertaining to energy and energy policy in which it has intervened, including Docket Nos. 96-0493 (Electric Competition, Including an Investigation of the Electric Utility Infrastructure of the State of Hawaii), 99-0004 (MECO's Integrated Resource Plan ("IRP")), 00-0209 (HECO's Demand-Side Management ("DSM") Program), 03-0253 (HECO's IRP), 03-0371 (Distributed Generation), 05-0069 (Energy Efficiency), and 05-0145 (HECO's Proposed Campbell Industrial Park Power Plant). No party opposed intervention by LOL in this docket.

Based upon the foregoing, the commission finds that LOL has a substantial interest that is reasonably pertinent to the matters of this docket, and that its participation in this proceeding may assist in the development of a sound record. Accordingly, the commission concludes that LOL's Motion should be granted.

C.

HREA's Motion

HREA is a Hawaii-based, private, non-profit corporation, exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986. It is

composed of developers, manufacturers, distributors, scientists, engineers, and advocates of renewable energy.

Like LOL, HREA or its members have been allowed to intervene or participate in several energy policy dockets before the commission. For example, individual members of HREA were intervenors in Docket No. 94-0226 (Renewable Energy), and the first two rounds of HECO's IRP, including the Externalities Working Group, Supply-Side and DSM Advisory Committees. In addition, HREA is a current member of the Advisory Groups for both HECO's and MECO's third IRPs, and HREA is or was an intervenor in Docket Nos. 99-0004 (MECO's second IRP), 96-0493 (Electric Competition, Including an Investigation of the Electric Utility Infrastructure of the State of Hawaii), 03-0371 (Distributed Generation), 03-0372 (Competitive Bidding for New Generation), 05-0069 (Energy Efficiency), 2006-0084 (Net Energy Metering), and 2006-0425 (Hawaii's Solar Water Heating Pay As You Save Program).

HREA states that it has a "substantial and continuing interest in the subject of renewable energy in the electric utility sector."⁸ Moreover, regarding this docket, HREA states: "HREA's interests extend directly to the implementation of RPS, including the development and implementation of appropriate incentives to the utility to meet its RPS and penalties should they fail to meet its [RPS], and other issues that were raised

⁸HREA's Motion, at 3.

and/or discussed during the two 'Act 95 Workshops.'"⁹ As with LOL, no party opposed intervention by HREA in this docket.

Upon review, the commission finds that HREA's participation will, among other things, assist in the development of a sound evidentiary record, and will not broaden the issues or unduly delay the proceedings. Accordingly, the commission concludes that HREA's Motion should be granted.

Nonetheless, both HREA and LOL are cautioned that their participation as intervenors in this docket will be limited to the issues raised in this docket. The commission will preclude any effort by HREA or LOL to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider either party's participation in this docket if, at any time, during the course of this proceeding, the commission determines that HREA or LOL are unreasonably broadening the pertinent issues raised in this docket or are unduly delaying the proceeding.

III.

Orders

THE COMMISSION ORDERS:

1. LOL's Motion is granted, provided that LOL's intervention will not broaden the issues or unduly delay the proceedings, and LOL follows all applicable rules of the commission.

⁹Id.

2. HREA's Motion is granted, provided that HREA's intervention will not broaden the issues or unduly delay the proceedings, and HREA follows all applicable rules of the commission.

DONE at Honolulu, Hawaii FEB 23 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

for Stan Orl Opa
Kaiulani Kidani Shinsato
Commission Counsel

2007-0008.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23276 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service
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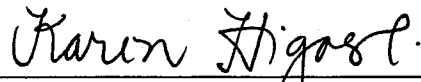
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